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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

Timothy K. Isaac,
Defendant.

CR-08-00036-001-PHX-PGR

**UNITED STATES' SENTENCING
MEMORANDUM**

1. Introduction.

Defendant's advisory Guidelines range is 97-121 months. Because defendant cooperated and consolidated several prosecutions into one combined proceeding, the United States recommends that the Court depart or vary downward from the suggested Guidelines range.

2. Cooperation and Extraordinary Acceptance of Responsibility.

a. FDA Prosecution.

Of the four investigations brought against defendant, this was the only indicted matter. In the FDA matter, defendant pled guilty and agreed to cooperate against others, both charged and uncharged. This was useful because his co-defendants, Laura and Bryan Gillette, while cooperating themselves, were unpredictable in many respects.^{1/} In his debriefing, defendant was honest about his major role in this offense, as well as the role of others who assisted in manufacturing and marketing his unapproved product. While no additional charges were

^{1/} This was later borne out by the suicide of Bryan Gillette.

1 brought against others who were involved in this case, his cooperation did allow the government
2 to better assess what had occurred and decide whether further prosecutions were warranted.

3 **b. IRS Prosecution.**

4 The IRS was the last agency brought into this consolidated matter. In investigating
5 defendant in the other three matters, and after defendant had been indicted in the FDA
6 prosecution, the IRS was asked to look into certain tax filings by defendant Isaac. Normally, a
7 tax investigation of this sort would take approximately two years to process within the IRS and
8 the tax division of the Department of Justice. This lengthy process was greatly streamlined
9 because defendant Isaac agreed to cooperate with the IRS from the beginning, even while under
10 indictment for the FDA charges.

11 From the moment defense counsel was contacted about adding a tax prosecution to
12 defendant's cooperation and overall exposure, defendant and his counsel began cooperating with
13 the IRS. First, defendant met with the IRS case agent and cooperated with the agent in
14 determining the amount of unreported income for the 2005-2007 tax years. This included both
15 unreported income as well as the payment of personal expenses from corporate accounts.
16 Second, defendant filed corrected returns for the years in question, which were verified by the
17 IRS. Third, defendant did not in any way improperly dispute the amount of taxes, interest and
18 penalties the IRS assessed for those years.^{2/}

19 This cooperative process significantly facilitated the resolution of defendant's tax issues
20 for the years in question. The time and expense saved by this pre-charging assistance was very
21 much appreciated by the government. The scope of his cooperation, and his acceptance of
22 responsibility, has been uncommon.

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26 ^{2/} Defendant has paid very little of what is owed, and is attempting to resolve the three
27 tax years in question, as well as tax year 2008, through an "offer in compromise" process. In
28 the government's view, defendant Isaac should have done much more to alter his lifestyle sooner
to free up funds to pay at least some of his accrued tax obligations.

1 **c. Bankruptcy Prosecution.**

2 This investigation was begun by the U.S. Trustee's Office before the FDA indictment was
3 returned, but it was brought to the attention of the U.S. Attorney's Office only after defendant
4 was indicted. Again, as he had agreed to do with the IRS, defendant pled guilty to his
5 bankruptcy misconduct. Defendant acknowledged his lies in the bankruptcy proceeding, and
6 has not disputed his overall exposure to creditors or the bankruptcy court.^{3/} Again, his
7 willingness to include this matter with the other three has greatly reduced the amount of
8 investigative, prosecutorial and judicial time spent on this bankruptcy prosecution.

9 **d. Supplemental Social Security Income Investigation.**

10 This investigation was opened by the U.S. Attorney at about the time defendant was
11 indicted in the FDA matter. Through counsel, defendant agreed to consolidate this matter with
12 the other three, and to cooperate fully with the determination of criminal liability and loss to the
13 government. Defendant readily acknowledged he was not entitled to the supplemental disability
14 income he received,^{4/} and has repaid Social Security for the sums he wrongfully obtained.

15 **e. Combined Resolution.**

16 I have never had a case that cooperatively combined this many investigative matters.
17 Defense counsel and defendant agreed to this global arrangement without much back and forth,
18 and the United States believes the consolidated result significantly reduced the amount of time
19 and work of several federal agencies and the judiciary. While the conduct itself should be
20 punished appropriately, the manner of capitulation is believed to be deserving of some mitigation
21 by the Court at sentencing. Defendant, when caught, through the expeditious advice of his

22 ^{3/} The only area of concern came in regard to whether the defendant could negotiate the
23 payment of lesser amounts to his creditors. After some communications with the investigator
24 for the U.S. Trustee, the amount of restitution defendant owed was not to be compromised for
25 sentencing purposes, but if individual creditors wanted to negotiate lesser amounts in a business
26 context, the creditors and defendant were not prohibited from doing so. Since the defendant may
27 not have sufficient assets to pay all his creditors, individual creditors were free to resolve their
28 liability for less than what they were owed.

^{4/} Though clearly impaired from a stroke, he was able to work and earn sufficient revenue
from his many businesses.

1 counsel, did what very few would have agree to do. As such, he not only gave full cooperation,
2 but also exhibited extraordinary acceptance of responsibility. In the government's view, his
3 conduct in resolving all four matters in this way is deserving of a departure or variance from the
4 advisory Guidelines range.

5 **3. Sentencing Factors.**

6 **a. Nature and Circumstances of the Offenses.**

7 The defendant's conduct was far reaching. He was an administrative and regulatory
8 nightmare to the federal government. The scope and duration of his regulatory abuses would
9 ordinarily suggest a harsher treatment. That being said, when defendant's conduct was
10 discovered, he acknowledged his wrongdoing and cooperated extensively with the government
11 to unwind his misconduct. His cooperative ending mitigates somewhat the overall impact of his
12 misconduct.

13 **b. History and Circumstances of the Defendant.**

14 Until recently, he has had no significant criminal history. Though he is only in Criminal
15 History I, the fact that he has pled guilty to charges arising out of four separate investigations
16 undercuts somewhat the clean nature of his record up to this point.

17 **c. Medical Care.**

18 Defendant Isaac has many medical issues. He appears to genuinely need the assistance
19 and care of another on a daily basis. He is not so impaired, however, as to make incarceration
20 impractical. His impairments do somewhat suggest that a sentence below the advisory
21 Guidelines range would be warranted.

22 **d. Restitution.**

23 Defendant has paid back Social Security for the approximately \$40,000 he stole from that
24 agency. He has paid very little of the \$250,000+ he owes the IRS, and still owes many creditors
25 more than \$1 million from his fraudulent bankruptcy action. This amount of debt might suggest
26 that less time be given so that the defendant could repay those he harmed. Unfortunately,
27 defendant has done very little during the pendency of this sentencing to repay his debts, yet he
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1 continued to live a lavish lifestyle and pay a monthly mortgage/rent of \$11,000.^{5/} If defendant
2 had abandoned his extravagant home and its monthly costs along time ago, he could have paid
3 off much more of his outstanding debt through his otherwise positive cash flow.

4 Defendant has filled out a detailed financial disclosure form about his assets and
5 liabilities, and passed a polygraph regarding its accuracy. He has an entrepreneurial background,
6 and is likely to be someone who will one day have the means to pay his restitution. Thus, this
7 factor would suggest a lesser amount of incarceration.

8 **e. Deterrence and Protection to the Public.**

9 The punishment should address deterring others from emulating his ways. It should also
10 be enough to discourage the defendant from doing this type of conduct in the future. Given the
11 amount of illegal conduct involved, and the disregard he showed to almost every statutory and
12 regulatory framework he encountered, these factors would suggest a higher sentence is
13 appropriate.

14 **4. Sentencing Recommendation.**

15 Overall, the defendant has done much to mitigate his circumstance. His willingness to
16 acknowledge all this illegal conduct in a global fashion has saved the government much time and
17 expense. His slight criminal history, significant medical issues, and restitution obligation also
18 suggest greater leniency. Offsetting these positive factors, in part, is the sheer volume of illegal
19 misconduct.

20 The government would like this sentence to reward defendant's willingness to
21 acknowledge what he obviously did, and not needlessly put the government through the costs
22 of proving him guilty in each case. For that reason, the United States would recommend that the
23 Court go below the advisory range and sentence defendant to 72 months of custody. A sentence
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25 ^{5/} His expensive home has a mortgage of \$2-3 million in his father's name, though his
26 father does not make the mortgage payment. Defendant has always been the beneficial owner,
27 and his dad is on the deed and mortgage in name only. Defendant has lived in the home from
28 the beginning, and has made the payments to service the debt and maintain the property.

1 at this level would do justice to the various sentencing factors, as well as give defendant credit
2 for his timely and beneficial acknowledgment of wrongdoing.

3 Respectfully submitted this 20th day of April, 2010.

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5 DENNIS K. BURKE
6 United States Attorney
7 District of Arizona

8 *S/Peter Sexton*

9 PETER SEXTON
10 Assistant U.S. Attorney

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on this day, I caused the attached document to be electronically
13 transmitted to Clerk's Office using the ECF system for filing and transmittal of a Notice of
14 Electronic Filing to the following CM/ECF registrants:

15 Mitchell Maher
16 Joseph Chornenky
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